



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

116

CWP-17615-2025
Date of Decision : 21.01.2026

M/S KNIGHT FLY BOYZ

.... PETITIONER

V/S

OFFICE OF DEPUTY COMMISSIONER OF STATE TAX (SGST)
GURUGRAM (EAST) AND ANOTHER

.... RESPONDENTS

**CORAM : HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE RAMESH CHANDER DIMRI**

Present : Mr. A.P.Jyothish, Advocate
for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

RAMESH CHANDER DIMRI, J.

1. Challenge in the present petition filed under Article 226 of the Constitution of India is to the order dated 31.12.2023 (Annexure P-2), 27.04.2024 (Annexure P-3) and 22.08.2024 (Annexure P-4) passed by the Excise and Taxation Officer, Gurgaon (East), under Section 73 of the Central Goods and Services Tax Act, 2017 (for brevity, 'Central Act').

2. The petitioner alleges in the petition that it is a partnership firm engaged in business of supplying manpower to its corporate clients. It is registered under the Goods and Services Act having GSTIN/ID : 06AAJFK4873CIZC. Its principal place of business is at the address mentioned

in para No.1 of the petition. It maintains its current account with Indian Overseas Bank and has been availing GST and income tax consultancy services from one Mr. Rishabh Aggarwal, Chartered Accountant of M/s Rishabh Aggarwal and Associates (Membership No.520889) located at Gurgaon. Since the introduction of the GST regime, the partners of the petitioner lacked expertise in tax compliance. They accordingly relied upon their abovestated Chartered Accountant for GST filings and tax payments. The arrangement of the petitioner with the said Chartered Accountant was as under:

- i. The Petitioners would send all sales invoices for the month to the Chartered accountant/Mr. Rishabh Aggarwal.*
- ii. The Chartered accountant/Mr. Rishabh Aggarwal would compute the Petitioner's monthly GST liability.*
- iii. As the Petitioners did not avail much input tax credit, GST liability was fully payable in cash Ledger (through bank Challan).*
- iv. As there were initially certain issues with the Petitioner's Internet banking facility, M/s Knight Fly Boyz, the Petitioner's transferred the GST amount directly to the bank account of the Chartered Accountant M/s Rishabh Aggarwal & Associates and based on his advice, for onward payment to the Government.*
- v. At the end of the year, the chartered Accountant firm provided the Petitioner with its Income Tax Returns and Audited Financial Statements.*

3. The petitioner further alleges that it was under the impression that GST payments were being regularly deposited by the said Chartered Accountant with the department. However, the said department issued demand order Annexure P-2 dated 31.12.2023, order Annexure P-3 dated 26.04.2024 and order Annexure P-4 dated 22.08.2024 to it for non-payment and irregularities in input tax credits for the financial years 2017-2018, 2018-19

and 2019-20 respectively. On receiving the said orders, the petitioner examined the matter and discovered that the said Chartered Accountant had deceived it by swindling huge sum of money on the pretext of paying the same in full to the said department. In fact, he paid partial amount towards the GST liability and misappropriated the remaining funds for his personal use. He, in fact, did not deposit Rs.1,83,07,400/- on behalf of the petitioner with the said department excluding interest and penalty. He had also collected other amounts totaling to Rs.13,59,880/- from the petitioner for deposit thereof with the said department. The said Chartered Accountant could be contacted with great difficulty through Whatsapp but he failed to render a satisfactory explanation and he also did not respond to the department on behalf of the petitioner. Petitioner accordingly came to know that he had fraudulently manipulated its GST filings by adjusting fake input credits and misappropriating funds entrusted to him for tax payment. He, therefore, has committed criminal acts of cheating etc. qua the petitioner. Now, his whereabouts are not known. His last known contact details have been mentioned in the petition. The petitioner filed a police complaint on 02.05.2025 against him but on being advised to file such complaint before the Economic Offences Wing-11, Gurugram, it withdrew the said complaint from the police and filed a similar complaint before the said Wing on 12.05.2025.

4. On receiving the said orders dated 31.12.2023, 27.04.2024 & 22.08.2024 under Section 73 of the Central Act from respondent No.1, the petitioner filed a Rectification ARN: AD061024007304S dated 26.10.2024. However, the same was rejected vide order dated 05.05.2025 (Annexure P-12).

The abovestated orders are in violation of principles of natural justice as no

proper opportunity of hearing was given to it before issuing the same. The said action has resulted in violation of Section 75(4) of the Central Act. In fact, the petitioner is victim of a fraud committed by its Chartered Accountant and respondent No.1 has overlooked the said material aspect of the matter. The petitioner had never intended to commit any default in the payment of the taxes and was rather transferring the required amounts of tax to the said Chartered Accountant. Respondent No.1 failed to look into the actual facts of the matter as well as evidence submitted by the petitioner. It has passed a mechanical order without giving proper reasoning. It has imposed an excessive and arbitrary penalty. The orders Annexures P-2 to P-4 are arbitrary and perverse.

5. We have heard the learned counsel for the parties and with their able assistance, have perused the file.

6. Learned counsel for petitioner has argued that Chartered accountant of the petitioner has, in fact, deceived it and the said fact has not at all been considered by respondent No.1 while passing the impugned orders Annexures P-2 to P-4 and also the order (Annexure P-12).

7. Learned Deputy Advocate General, Haryana has argued that impugned orders are not at all in violation of the principles of natural justice; that there was a statutory remedy available to the petitioner but it has filed the petition in question without availing the same and that on said count alone, the petition in question deserves to be dismissed; that order dated 05.05.2025 (Annexure P-12) is also as per the settled proposition of law.

8. It is relevant to note that orders Annexures P-2 to P-4 have been passed while exercising powers under Section 73(9) of the State Act as well as Central Act. Section 73 of the Central Act, is reproduced as under :-

“73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful- misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other

than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or subsection (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten percent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.”

9. In terms of Section 107 of the Central Act, any person aggrieved by a decision or order passed under the said Act or the State Act may appeal to such Appellate Authority as may be prescribed, within three months from the date on which the said decision or order was communicated to such person. Section 107 of Central Act which prescribes the procedure in respect of filing of appeals, is reproduced as under :

“107. Appeals to Appellate Authority

(1) Any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017) by an adjudicating authority may appeal to such Appellate Authority, as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of central tax, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act or the Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017) for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it

were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner, as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid –

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten percent of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper,

confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of central tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.”

10. It is a matter of record that petitioner has filed this writ petition without invoking the remedy of appeal admittedly provided under the said Section. In fact, the said orders specifically mentioned the authority also before whom, such appeals could have been filed. The petitioner, since admittedly has not filed the appeals prescribed under the said Section/Rule, in the garb of violation of the principles of natural justice, has filed the instant writ petition.

11. Learned counsel for petitioner has urged that the present writ petition should be entertained de hors the remedy of appeal being available in view of gross violation of principles of natural justice as no opportunity of hearing was provided to petitioner before passing the impugned order. It is a settled position that in such like matters where specific statutory remedy is available, interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India has to be minimal and actuated only in extraordinary or exceptional circumstances.

12. It is to be noted that in the instant matter, petitioner itself accepts that it was issued the abovestated demand orders under Section 73(9) of the Haryana Goods and Services Tax Act, 2017 (for brevity, 'State Act') and the Central Act, while submitting that the notices and order were not brought to its notice by its Chartered Accountant. Order dated 31.12.2023, Annexure P-2 itself mentions that petitioner was served with a show cause notice dated 29.09.2023 but it did not submit any response. It is further mentioned that personal hearing in the matter was scheduled on 26.12.2023 but nobody appeared on behalf of the petitioner. It is only after providing sufficient opportunities to petitioner that impugned order dated 31.12.2023 was passed.

The said order also states that if petitioner is aggrieved thereof, it may file an

appeal against the same before the Appellate Authority appointed under Rule 109A of the State Act and Joint Commissioner of State Tax (Appeal), Gurugram is authorized to hear such appeal. Similarly, order dated 26.04.2024 (Annexure P-3) also mentions that despite issuance of notice in form GST ASMT-10 dated 27.06.2023 to the petitioner, it did not file any response to the same within the prescribed time. In the order Annexure P-4 also, it has been mentioned that ASMT-10 dated 05.03.2024 and notice dated 17.05.2024 with adjournments and opportunity of hearing were afforded to the petitioner but it did not submit required reply.

13. No doubt, petitioner claims that its Chartered Accountant has cheated it and its partners but the fact remains that it is the case of petitioner itself that the said Chartered Accountant was acting on its behalf in respect of GST and other matters with the respondents. In that view of the matter, the said Chartered Accountant necessarily acts as an agent of the petitioner. It is settled position that anything done by an agent on behalf of his principal is to be treated as done by the principal himself. Abovesaid impugned orders demonstrate that notices were served upon petitioner through the said Chartered Accountant, whom the petitioner has admitted to be acting on its behalf.

14. Furthermore, it is not the case of petitioner that it was not liable to pay the taxes/amounts mentioned in the impugned orders. What petitioner asserts is that it had, in fact, transferred the amount due to the department, to its Chartered Accountant who instead of depositing the same with respondents has misappropriated part thereof. If that be so, remedy of petitioner in respect thereof clearly lies elsewhere and not before this Court, which the petitioner is

at liberty to avail in accordance with law. Moreover, the ground as raised is a disputed question of fact which cannot be adjudicated upon in present proceedings and cannot be taken to be an extra-ordinary circumstance which calls for interference in the present writ petition. Insofar as challenge to order dated 05.05.2025 (Annexure P12) rejecting petitioner's application for rectification is concerned, the same has been correctly passed. It has been rightly held by the authority that request for rectification cannot come under the purview of error apparent on the face of record as per Section 161 of HGST/CGST Act, 2017.

15. No other argument has been addressed.

16. Writ petition is, accordingly, dismissed being devoid of merit.

(LISA GILL)
JUDGE

(RAMESH CHANDER DIMRI)
JUDGE

21.01.2026

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No